

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CRAIG LAMONT THOMPSON,)
)
Petitioner,)
)
)
v.) **No. 2:09-cv-00074**
) **Judge Sharp**
JEWEL STEEL, Warden,)
)
Respondent.)

ORDER

On August 14, 2012, the Magistrate Judge entered a Report and Recommendation (Docket No. 69) recommending that Petitioner's Petition for Writ of Habeas Corpus be allowed to proceed to its merits. Respondent filed its Objections to the Report and Recommendation (Docket No. 70), to wit, that Petitioner's claim of mental incapacity does not warrant equitable tolling in this case, and that Petitioner did not show that he acted diligently in filing his Habeas petition after he became able to do so. Petitioner filed a Response to Respondent's Objections. (Docket No. 71.)

The Court has conducted a *de novo* review of the matter in accordance with 28 U.S.C. § 636(b)(1), Rule 8(b), Habeas Corpus Rules, Fed. R. Civ. P. 72(b), and Rule 72.03, Local Rules of Court. After reviewing the record, including the transcript of the evidentiary hearing held before the Magistrate Judge on April 10, 2012, the Court agrees with the Magistrate Judge's recommendation that the Petition be deemed timely and allowed to proceed to its merits. “[T]he decision whether to equitably toll a period of limitations must be decided on a case-by-case basis.” *Miller v. Collins*, 305 F.3d 491, 495 (6th Cir. 2002). In particular, the Court notes the Magistrate Judge's determination that the unrebutted testimony of Petitioner's expert, John

Joseph Griffin, M.D., was “highly credible” and, to a reasonable degree of medical certainty, explained that Petitioner was mentally incompetent from June 14, 1996, to June 18, 2009, and that his incompetence prevented him from timely filing his Petition despite his diligent efforts to do so. Thus, he is entitled to equitable tolling of the one-year statute of limitations under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2244(d)(1)(A).
See Ata v. Scutt, 662 F.3d 736, 742 (6th Cir. 2011).

Accordingly, the Report and Recommendation (Docket No. 69) is hereby ACCEPTED and APPROVED. The matter is recommitted to the Magistrate Judge for further proceedings.

It is SO ORDERED.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE